88-1231

Supreme Court, U.S.
FILED
JAN 23 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1988

Walter J. Moeller, pro se

Petitioner

-v.-

United States Government, et al

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

WALTER J. MOELLER, PRO SE
Route 2
West Fork, AR 72774
(501) 839-2484

QUESTIONS PRESENTED

1. Are public servant employees of the Internal Revenue Service absolutely immune from civil liability where they flagrantly violate IRS regulations, engage in criminal conduct, conspire to deprive sovereign citizens of their constitutional rights, and assess and collect taxes by lien and levy which they know are not owed, all under color of law?

2. Is a final order of the District Court dismissing with prejudice all the individuals and issues pertaining thereto appealable to the Court of Appeals under Title 28 U.S.C. § 1291?

3. Does the District Court retain authority and jurisdiction over persons and issues which are on appeal?

4. May a district judge who has recused himself from a case thereafter reassert his jurisdiction over that case?

5. Does a district judge have authority to issue Sua sponte an order dismissing with prejudice all the individuals and issues in a complaint pertaining thereto without hearing or receiving any evidence?

6. Did the district judge exceed his authority and jurisdiction when he forbid the Court Clerk to issue summonses to any of the individuals listed in my complaint?

THE PARTIES

WALTER J. MOELLER
ROUTE 2
WEST FORK, AR 72774
Pro Se

PETITIONER

vs.

UNITED STATES GOVERNMENT

RESPONDENTS

and
ROSCOE L. EGGERS, JR., Individually
and in his capacity as a public servant
employee of the IRS.
and
JAMES WESTBROOK, Individually
and in his capacity as a public servant
employee of the IRS.
and
PAUL D. WILLIAMS, Individually
and in his capacity as a public servant
employee of the IRS.
and
WILLIAM F. BARLOW, Individually
and in his capacity as a public servant
employee of the IRS.
and
H. CARRADINE, Individually
and in his capacity as a public servant
employee of the IRS.
and
RANDALL HAYNES, Individually
and in his capacity as a public servant
employee of the IRS.
and
S. R. McKEEVER, Individually
and in his capacity as a public servant
employee of the IRS.
and
RICHARD C. VOSKUIL, Individually

and in his capacity as a public servant
employee of the IRS.
and
V. REGAN, Individually
and in his capacity as a public servant
employee of the IRS.
and
M. SORRELLS, Individually
and in his capacity as a public servant
employee of the IRS.
and
GUS McCLANAHAN, Individually
and in his capacity as a public servant
employee of the IRS.
and
TONY TREAT, Individually
and in his capacity as a public servant
employee of the IRS.
and
MILTON A. BARNETT, Individually
and in his capacity as a public servant
employee of the IRS.
and
DAVID COLE, Individually
and in his capacity as a public servant
employee of the IRS.
and
DAVID N. BRADSHAW, Individually
and in his capacity as a public servant
employee of the IRS.
and
MARGARET ROBERTS, Individually
and in her capacity as a public servant
employee of the IRS.
and
LINDA SISSON, Individually
and in her capacity as a public servant
employee of the IRS.
and
C. B. HARMON, Individually
and in his capacity as a public servant
employee of the IRS.
and
RAYMOND P. KEENAN, Individually

and in his capacity as a public servant employee of the IRS.

and

UNKNOWN PUBLIC SERVANT EMPLOYEES OF THE INTERNAL REVENUE SERVICE, et al, whose names are indicated by the records of the Internal Revenue Service, individually and in their capacity as employees of the Internal Revenue Service.

TABLE OF CONTENTS

Page

Questions Presented.....(i)

The Parties.....(ii)

Table of Contents.....(v)

Table of Authorities.....(vii)

Opinions Below.....1

Jurisdiction.....2

Constitutional & Statutory Provisions Involved.....3

Statement of the Case.....6

Argument.....19

I. PUBLIC SERVANT EMPLOYEES OF THE IRS ARE NOT ABSOLUTELY IMMUNE FROM LIABILITY FOR THEIR CRIMINAL ACTS AND THE TOTAL DISREGARD FOR THEIR RULES AND PROCEDURES.....21

II. AN ORDER ARBITRARILY ISSUED BY THE COURT DISMISSING WITH PREJUDICE ALL OF THE INDIVIDUALS LISTED IN MY COMPLAINT AND ALL THE ISSUES CONNECTED THERETO IS A FINAL ORDER AND APPEALABLE AS OF RIGHT UNDER THE PROVISIONS OF TITLE 28 U.S.C. § 1291.....30

III WHEN AN APPEAL IS PROPERLY DOCKETED IN THE COURT OF APPEALS, THE DISTRICT COURT LOOSES ALL AUTHORITY AND JURISDICTION OVER THE ISSUES ON APPEAL.....39

IV. ONCE A DISTRICT JUDGE RECUSES HIMSELF FROM A CASE, HE IS BARRED FROM REASSERTING HIS AUTHORITY OVER THAT CASE 42

V. A JUDGE WHO DISMISSES A CAUSE OF ACTION WITHOUT HEARING OR RECEIVING ANY EVIDENCE IS IMPOSING A SEVERE PENALTY ON THE PLAINTIFF THAT IS CONTRARY TO THE USUAL COURSE OF JUDICIAL PROCEEDING.....45

IV. THE REFUSAL OF THE CLERK OF DISTRICT COURT TO ISSUE SUMMONSES WAS IN DIRECT VIOLATION OF TITLE 28 U.S.C. RULE 4 FRCP.....54

CONCLUSION.....55

APPENDIX TABLE OF CONTENTS.....(ia)

TABLE OF AUTHORITIES

U.S. CONSTITUTION Page

ARTICLE III.....3,18

ARTICLE VI.....3,25

AMENDMENT I.....3,18,24,28,50

AMENDMENT IV.....3,18,28,50

AMENDMENT V.....3,18,24,28,50

AMENDMENT VI.....3,18,29,51

AMENDMENT VII.....3,18,24,28,51

AMENDMENT VIII.....3,18,29

AMENDMENT IX.....3,18,25

AMENDMENT X.....3,18,25

CASES

Bank of Columbia v. Sweeny, 1 Pet 567....38

Barr v. Matteo, 360 US 564 (1959).....23

Berger v. US, 255 US 22 (1921).....43

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 US 388 (1971).....21

Bon Air Hotel, Inc. v. Time, Inc., 376 F.2d 118 (1967).....53

Bronson v. Railroad Co., 2 Black 524....36

Brown Shoe Co. v. US, 370 US 274.....36

Butz v. Economou, 438 US 476 (1978)...21,23

Cobbledick v. US, 309 US 323.....38

Cohen v. Beneficial Industrial Loan Corp., 337 US 541 (1949).....36,37,38

Conerly v. Westinghouse Elect. Corp., F.2d 117 (1980).....35

Dickinson v. Petroleum Conversion Corp., 338 US 507.....36

Dorsey v. Academy Moving & Storage, 423 F.2d 858 (1970).....53

Eisen v. Carlisle & Jacquelin et al, 417 US 156 (1974).....38

Emerick v. Fenick Industries, Inc., 539 F.2d 1379 (1976).....53

Experimental Engineering v. United Technologies, 614 F.2d 1244 (1980).....35

Fenton v. Thompson, 176 SW 2d 456 (1944).....32,34

Firestone Tire & Rubber Co. v. Risjord 449 US 368 (1981).....41

Forgay v. Conrad, 6 How 201.....36

Gillespie Administratrix v. U.S. Steel Corp., 379 US 148 (1964).....36

Gonzalez v. Gonzalez, 127 NE 2d 673.....35

Harlow v. Fitzgerald, 457 US 800 (1982)..21

Harris v. Moye's Estate, 202 SW 2d 306...35

In re Estate of Crain, 99 NE 2d 204.....35

In re Murchison, 349 US 133 (1955).....44

Jefferson Fourteenth Assoc. v. Wometo De Puerto Rico, 695 F.2d 524 (1983).....52

Land v. Dollar, 330 US 731.....37

Larson v. Domestic & Foreign Commerce Corp, 337 US 682.....37

Leonard v. US, 633 F.2d 599 (1980).....40

Marbury v. Madison, 5 US 137 (1803).....21

Nixon v. Fitzgerald, 457 US 731 (1982)...21

Offutt v. US, 348 US 11.....44

Pepsico Inc., v. McMillen, 764 F.2d 458 (1985).....44

SCA Services, Inc. v. Morgan, 557 F.2d 110 (1977).....44

Schuster v. Northern Co., 256 P2d 249....35

Segal v. Garrigues, 320 So 2d 475.....33

Simmons v. US., 390 US 377 (1968).....51

Societe International v. Rogers, 357 US 197 (1958).....53

Spalding v. Vilas, 161 US 483 (1896).....23

Strenger v. US, 233 F.2d 947 (1956).....43

Thomas v. US., 531 F.2d 746 (1976).....53

Tuny v. Ohio, 273 US 510.....44

United States v. Brown, 539 F.2d 467 (1976).....44

Udey v. District Director IRS, 534 F. Supp. 219 (1982).....23

United States v. General Motors Corp., 323 US 373.....36

United States v. River Rouge Co., 269 US 411.....38

United States v. Ryan, 402 US 530 (1971).41

STATUTES

18 U.S.C. Section 144.....4,26

18 U.S.C. Section 241.....4,27

18 U.S.C. Section 242.....4,27

18 U.S.C. Section 872.....4,27

18 U.S.C. Section 1001.....4,27

18 U.S.C. Section 1018.....4,27

18 U.S.C. Section 1621.....4,27

18 U.S.C. Section 1622.....4,27

26 U.S.C. Section 7214.....4,22,24,27

26 U.S.C. Section 7422.....4,8,18

26 U.S.C. Section 7804.....4

IRS Rules Section 301.6203-1.....4,25

IRS Rules Section 601.101.....4,25

IRS Rules Section 601.102.....5,25

IRS Rules Section 601.103.....5,25

IRS Rules Section 601.105.....5,25

IRS Rules Section 601.106.....5,25,26

28 U.S.C. Section 144.....5,10,15,43

28 U.S.C. Section 453.....5,25

28 U.S.C. Section 455.....5,10,15,43,44

28 U.S.C. Section 1254(1).....3,5

28 U.S.C. Section 1291...(i),1,5,7,19,20,31
32,35,36,37,38,40,41

28 U.S.C. Section 1292(b).....37

28 U.S.C. Section 1331.....5,6,18

28 U.S.C. Section 1340.....5,7,18

28 U.S.C. Section 1343.....5,7,18

28 U.S.C. Section 1346.....5,7,18

28 U.S.C. Section 1652.....5

28 U.S.C. Section 1653.....5

28 U.S.C. Section 1654.....6

28 U.S.C. Section 2072.....6,50

28 U.S.C. Section 2101(c).....18

Rule 4 FRCP.....11,54

Rule 8 FRCP.....51

Rule 11 FRCP.....12

Rule 12 FRCP.....53

Rule 20 SCt.....18

Rule 41(b) FRCP.....45,46,50,52

Rule 56 FRCP.....53

Rule 28 FRCP.....1,9,39

Rule 60(b)(4).....52

Rule 79 FRCP.....1,9,39

42 U.S.C. Section 1985.....6,18

42 U.S.C. Section 1986.....6,18

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1988

Walter J. Moeller, pro se

Petitioner

-v.-

United States Government, et al

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

I, Walter J. Moeller pro se, not a lawyer, respectfully petitions this court for a writ of certiorari to review the final judgment of the district court and the Court of Appeals for the Eighth Circuit dismissing my appeal for lack of jurisdiction dated November 2, 1988.

OPINIONS BELOW

There has been no official reports of any opinions of the courts below.

The U.S. District Court issued an order and letter opinion without hearing or receiving any evidence dated July 21, 1987, dismissing with prejudice all the individuals and issues pertaining thereto. The order and letter opinion is included in the appendix as Exhibit A and B respectively at pages 1a and 3a. This order was timely appealed as of right under the provisions of Title 28 U.S.C. § 1291 and was entered in the civil docket in accordance with Rule 58 and 79 FRCP.

The appeal was docketed in the Appeals Court and the briefing scheduled order issued on August 21, 1987.

The appeal was dismissed for lack of jurisdiction without comment by order dated September 22, 1988. A copy of this order is included in the appendix as Exhibit C at

Page 5a. A petition for rehearing was filed on October 5, 1988. The Appeals Court rejected this petition with its order dated November 2, 1988. A copy of this order is included in the appendix as Exhibit K at page 25a.

JURISDICTION

The order and letter opinion to be reviewed was issued by the District Court on July 21, 1987.

A timely appeal from this order was taken to the Appeals Court. The judgment of the Appeals Court was issued September 22, 1988 dismissing my appeal for lack of jurisdiction. I filed a timely petition for rehearing with suggestion for rehearing en banc with the Court of Appeals. The petition was denied on November 2, 1988. I now seek review of these orders.

This court has jurisdiction to review the judgment of the Court of Appeals under the Constitution of the United States and

by writ of certiorari pursuant to Title 28 U.S.C. § 1254(1) 1988.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(The titles only are listed below. The complete text or the pertinent parts thereof are contained in the appendix at the pages indicated).

U.S. CONSTITUTION

ARTICLE III
(Appendix Page 30a)

ARTICLE VI
(Appendix Page 30a)

AMENDMENT I
(Appendix Page 30a)

AMENDMENT IV
(Appendix Page 31a)

AMENDMENT V
(Appendix Page 31a)

AMENDMENT VI
(Appendix Page 31a)

AMENDMENT VII
(Appendix Page 31a)

AMENDMENT VIII
(Appendix Page 32a)

AMENDMENT IX
(Appendix Page 32a)

AMENDMENT X
(Appendix Page 32a)

TITLE 18 U.S.C. § 4
(Appendix Page 32a)

TITLE 18 U.S.C. § 241
(Appendix Page 32a)

TITLE 18 U.S.C. § 242
(Appendix Page 33a)

TITLE 18 U.S.C. § 872
(Appendix Page 33a)

TITLE 18 U.S.C. § 1001
(Appendix Page 34a)

TITLE 18 U.S.C. § 1018
(Appendix Page 34a)

TITLE 18 U.S.C. § 1621
(Appendix Page 35a)

TITLE 18 U.S.C. § 1622
(Appendix Page 35a)

TITLE 26 U.S.C. § 7214
(Appendix Page 35a)

TITLE 26 U.S.C. § 7422
(Appendix Page 36a)

TITLE 26 U.S.C. § 7804
(Appendix Page 37a)

IRS PROCEDURE AND ADMINISTRATION
RULES AND REGULATIONS

IRS RULES § 301.6203-1
(Appendix Page 38a)

IRS RULES § 601.101
(Appendix Page 38a)

IRS RULES § 601.102
(Appendix Page 38a)

IRS RULES § 601.103
(Appendix Page 38a)

IRS RULES § 601. 105
(Appendix Page 39a)

IRS RULES § 601.106
(Appendix Page 40a)

TITLE 28 U.S.C. § 144
(Appendix Page 40a)

TITLE 28 U.S.C. § 453
(Appendix Page 41a)

TITLE 28 U.S.C. § 455
(Appendix Page 41a)

TITLE 28 U.S.C. § 1254(1)
(Appendix Page 41a)

TITLE 28 U.S.C. § 1291
(Appendix Page 41a)

TITLE 28 U.S.C. § 1331
(Appendix Page 41a)

TITLE 28 U.S.C. § 1340
(Appendix Page 42a)

TITLE 28 U.S.C. § 1343
(Appendix Page 42a)

TITLE 28 U.S.C. § 1346
(Appendix Page 42a)

TITLE 28 U.S.C. § 1652
(Appendix Page 42a)

TITLE 28 U.S.C. § 1653
(Appendix Page 43a)

TITLE 28 U.S.C. § 1654
(Appendix Page 43a)

TITLE 28 U.S.C. § 2072
(Appendix Page 43a)

TITLE 42 U.S.C. § 1985
(Appendix Page 43a)

TITLE 42 U.S.C. § 1986
(Appendix Page 44a)

STATEMENT OF THE CASE

This petition arises from an order of the U.S. Court of Appeals which dismissed for lack of jurisdiction my appeal of a final order of the U.S. District Court which dismissed with prejudice all the individuals and all the issues pertaining thereto contained in my complaint.

This case is a controversy founded upon my assertion of constitutional rights arising under the first, fourth, fifth, sixth, seventy, eighth, ninth and tenth Amendment to the U.S. Constitution Title 26 U.S.C. § 7422 and under Title 42 U.S.C. §§ 1985 and 1986 with jurisdiction laid under Article III § 2 of the U.S.

1331, 1340, 1343, and 1346.

Notice of appeal to the U.S. Eighth Circuit Court of Appeals was made on August 18, 1987 from the final order of the U.S. District Court for the Western District of Arkansas dated July 21, 1987 dismissing with prejudice all the individuals and all the issues pertaining thereto contained in my complaint. (See appendix exhibit "A" and "B" at page 1a and 3a). The appeal was docketed as Civ. Appeal No. 87-2141WA. (See appendix exhibit C at page 5a). The jurisdiction of the court of appeals is contained in Title 28 U.S.C. § 1291.

The Appeals Court dismissed the appeal with its order dated September 22, 1988, (see appendix exhibit "K" at page 25a). I filed a timely motion for rehearing with suggestion for rehearing en banc with was denied by the Appeals Court order dated November 2, 1988, (see

appendix exhibit "L" at page 29a).

On July 14, 1987, I filed a complaint as authorized by Title 26 U.S.C. § 7422 in the U.S. District Court for the Western District of Arkansas, Fayetteville Division against the U.S. Government to recover money that had been unlawfully assessed and collected by lien and levy against my Army retired pay and my Social Security benefits.

The complaint was also a civil action against several named employees of the IRS individually whereby I was seeking damages for their criminal conspiracy to defraud me of my money under color of law which they knew I did not owe, for their total disregard of Internal Revenue Code Administrative Rules and Procedures for knowingly filing false documents, for depriving me of my money by lien and levy under color of law and which they knew I did not owe and for libel for filing in the public records a false and fraudulent

lien which they knew to be false.

As a direct result of the criminal acts of the public servant employees of the IRS, I was deprived of my money that I did not owe, all under color of law and in violation of my constitutional rights.

The part of my complaint as pertained to all of the named individuals was dismissed with prejudice by Judge Waters in his order dated July 21, 1987 and filed July 22, 1987 without a hearing; no witness was called, no testimony was taken and no evidence was presented nor was I given notice. The order is included in the appendix marked exhibit "A" at page 1a. The letter opinion accompanying the order is included in the appendix marked exhibit "B" at page 3a. The order was entered on the civil docket in accordance with Rule 58 and 79(b) FRCP.

On August 18, 1987 I filed a timely notice of appeal. The clerk of the

District Court certified two copies of the final order dated July 21, 1987, (see Appendix Exhibit A at page 1a), along with the clerk's docket entries and mailed to the clerk USCA, St. Louis, MO. on August 18, 1987.

The clerk of the U.S. Court of Appeals acknowledged receipt of the Notice of Appeal and the docket entries and docketed the appeal as No. 87-2141WA. This letter and the scheduling order is included in the appendix and market exhibit "C" at page 5a.

I filed a motion to disqualify Judge Waters in accordance with Title 28 U.S.C. §§ 144 and 455 on September 1, 1987. The Government filed a response to my motion to disqualify Judge Waters on September 18, 1987 and I made response on September 28, 1987.

The Government filed a motion to dismiss my appeal on September 18, 1987.

I made response on September 25, 1987.

My appeal brief was forwarded to the Court of Appeals on September 21, 1987.

On several occasions either myself or my typist attempted to obtain summonses for the individuals named in my complaint from the clerk of the District Court and on each occasion, the summonses were denied. On September 23, 1987 I obtained a signed statement from the court clerk to the effect that the summonses could not be issued because the defendants had been dismissed by court order dated July 22, 1987. The refusal of the court clerk to issue the summonses is in direct violation of Rule 4 FRCP. This letter is included in the appendix and marked exhibit "D" at page 8a.

On September 24, 1987, Judge Waters addressed a letter to myself and the Government recusing himself from the case No. Civ. 87-5089. This letter is included in the appendix and marked

exhibit "E" at page 9a.

On September 28, 1987 I filed a motion in the U.S. Court of Appeals to compel the clerk of the District Court to issue the summonses for the individuals named in my complaint. No action has been taken by the court on this motion.

On October 16, 1987 the Government filed a motion in the District Court to dismiss the part of my complaint against the government, as pertained to the recovery of my money that was unlawfully assessed and collected from me by lien and levy. The government's motion contained false statements. My response to the Government's motion was filed on October 27, 1987. In this response I pointed out the false statements made by the government and requested that the court take action against the government lawyers under Rule 11 FRCP. No action was taken by the court in this matter. court The Government attempted to

respond to my response on November 4, 1987 but the court rejected this Government response as not being in accordance with local rule 20. My response was also rejected. Thereupon, the Government filed a Motion for Leave to File a Reply dated February 2, 1987. The Court granted this motion with its order of February 8, 1987. The government's response was, in effect, a second motion to dismiss. This order is included in the appendix and marked exhibit "F" at page 11a. I responded to the Government's response with my response dated February 11, 1987. On February 12, 1987, I filed a motion to void and vacate the court order dated February 8, 1987 for the court's lack of jurisdiction.

On February 19, 1987, the District Court, (Judge Waters) issued an order and accompanying letter stating that my motion to disqualify the judge is denied,

that the court finds that the Government defendant's motion to dismiss is considered a motion to make more definite and certain and directed me to make my motion (complaint), more definite and certain in the manner specified in the court's letter opinion. The court order is included in the appendix marked exhibit "G" at page 13a. The accompanying letter opinion is marked Exhibit "H" and included in the appendix at page 15a.

The court letter opinion, which was made a part of the court order, stated that the court had jurisdiction to proceed in spite of the appeal, that the appeal was clearly an attempt to appeal a non-appealable order because the order was not a final order in spite of the fact that the order dismissed with prejudice all the individual defendants listed in my case. The court then stated that "all portions of the lawsuit have

been dismissed with the exception of his claim, if he has made such a claim that he is entitled to recover taxes in the amount of $10,316.54, $467.45 of which has been refunded to plaintiff..... The court will not accept a pleading which attempts to make claims other than that which the court left pending by its July 21, 1987, letter and order." This letter is included in the appendix and marked exhibit "H" at page 15a.

I made response to the above court order and letter of February 24, 1987 pointing out the court's lack of jurisdiction or authority to issue the order or letter of February 19, 1987 because the issues contained in the order were on appeal and the judge was disqualified under Title 28 U.S.C §§ 144 and 455.

On February 26, 1987, I filed a petition for writ of Mandamus with the U.S. Court of Appeals requesting the

appeals court to order Judge Waters to recuse himself from the case.

On March 28, 1987, Judge Waters issued an order dismissing with prejudice the only portion of my complaint remaining, namely the portion against the Government to recover taxes that were unlawfully collected by lien and levy. This order is included in the appendix marked Exhibit "I" at page 20a.

I filed a timely "Notice of Appeal" on May 18, 1988 and the court clerk of the District Court forwarded to the court of appeals the docket entries and the notice of appeal on the same day. The appeal was docketed May 23, 1988 as appeal #88-1782WA.

My letter of June 3, 1988 addressed to the District Court clerk designated the record on appeal and is included in the appendix as exhibit "J" at page 23a.

The Government filed a motion for extension of time to file their brief on

July 27, 1988, my objection was filed on August 4, 1988 and my objection was denied on the same date. The Government was granted an extension of time August 25, 1988.

The Appeals Court issued an order dated August 19, 1988 holding in abeyance all action on the case until two weeks after the resolution of the status of appeal no. 87-2141WA.

On September 22, 1988 the Appeals Court issued an order dismissing appeal #87-2141WA for lack of jurisdiction. This order is included in the Appendix marked Exhibit "K" at page 27a. On September 28, 1988 the Appeals Court issued an order for a new briefing schedule.

On October 3, 1988, I filed a petition for rehearing.

The Government filed its appeal brief on October 12, 1988.

The Appeals Court issued an order dated October 19, 1988 supplementing its order of September 22, 1988.

I filed my response brief on October 27, 1988.

On November 2, 1988, the Appeals Court issued an order denying my petition for rehearing. (See appendix Exhibit "L" at page 29a).

This petition for Writ of Certiorari is filed within the 90 day time limit specified by rule 20 of the Supreme Court and Title 28 U.S.C. § 2101(c).

Jurisdiction of the U.S. District Court is based upon the Constitution of the United States Article III § 2 and Amendments I, IV, V,. VI, VII, VIII, IX, and X, Title 26 U.S.C. § 7422, Title 28 U.S.C. §§ 1331, 1340, 1343 and 1346, and Title 42 U.S.C. §§ 1985 and 1986. Jurisdiction of the U.S. Court of Appeals

is based upon Title 28 U.S.C. § 1291, appeal as right from a final order of a district court.

ARGUMENT

The decision of the district court and the Court of Appeals are in direct conflict with other Court of Appeals and decisions of the Supreme Court.

The district court's decision granting absolute immunity to public servant employees of the IRS is in direct conflict with decisions of other courts and decisions of the Supreme Court. The action of the district court in dismissing my complaint without hearing or receiving any evidence was a far departure from the accepted and usual course of Judicial proceedings so as to deny me my constitutional and statutory rights.

The Court of Appeals in dismissing my

appeal for lack of jurisdiction is in direct conflict with Title 28 U.S.C. § 1291 and decisions of the Supreme Court in regard to a final decision of the district court.

The Appeals Court in refusing to review a final decision of the district court which dismissed my cause of action with prejudice against all the individuals in my complaint was in direct conflict with the decisions of other courts of appeal with reference to jurisdiction and in direct conflict with decisions of the Supreme Court.

The decision of the Appeals Court sanctions the action of the district court which are in direct conflict with the Constitution, statutory provisions and decisions of the Supreme Court. Thus, the appeals court has sanctioned the action of the district court which is such a far departure from the accepted and usual course of judicial procedure,

that it is essential for this court to exercise its power of supervision.

PUBLIC SERVANT EMPLOYEES OF THE IRS ARE NOT ABSOLUTELY IMMUNE FROM LIABILITY FOR THEIR CRIMINAL ACTS AND THE TOTAL DISREGARD FOR THEIR RULES AND PROCEDURES.

Judge Waters erred when he stated in his letter opinion dated July 21, 1987, (Appendix B at page 3a). "the cases and statutes which hold that employees of the Internal Revenue Service may not be individually sued are almost too numerous to list." This statement is in error and is in direct conflict with Butz v. Economou, 438 US 478 (1978, Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 US 388 (1971), Nixon v. Fitzgerald, 457 US 731 (1982), Marbury v. Madison, 5 US 137, (1803), and Harlow v. Fitzgerald, 457 US 800. Judge Waters further states in his Letter Opinion: "A suit or proceeding referred to in subsection (a) may be maintained only

against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative." Section a, (Appendix at pages 36a and 37a), referred to by Judge Waters pertains to the recovery of Internal Revenue tax unlawfully collected. My complaint was against the Government for the recovery of the money which was unlawfully assessed and collected. My complaint against the public servant employees of the IRS was for damages suffered by me as a result of their unlawfully acts, the total disregard for the IRS rules and regulations, for their criminal acts and for their violation of my constitutional rights in collecting money that I did not owe by lien and levy. Suits against agents of the IRS for damages is specifically authorized by Title 26 U.S.C. § 7214, last sentence thereof, (Appendix at page 35a and 36a).

Judge Waters entertains the erroneous idea that IRS agents are absolutely immune from suit. This is evidenced by statement he made in the case of Udey v. District Director/ IRS, 534 F.Supp. 219 (1982), a case decided by Judge Waters, in which he stated:

> "The law clearly is that a federal officer is absolutely immune from action based upon common law torts occurring within the scope of the officer's duty. Spalding v. Vilas, 161 U.S. 483, 16 S.Ct. 631, 40 L.Ed. 780 (1896), Barr v. Matteo, 360 U.S. 564, 79 S.Ct. 1335, 3 L.Ed.2d 1434 (1959), Butz v. Economou, 438 U.S. 478, 98 S.Ct. a2894, 57 L.Ed.2d 895 (1978)."

This statement is true only where the Government official acts within the scope of his official duties but where that government official steps outside the bounds of his official duties and violates criminal laws and invades protected constitutional rights so as to victimize a sovereign citizen and cause him harm, the government official becomes pecuniarily liable to the victim of the

abusive process for personal damages against the Government official.

This fact is clearly set forth in Title 26 U.S.C. § 7214, (appendix at pages 35a and 36a), which is quoted in part as follows:

> ". . . . The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution."

The Supreme Court cases quoted above by Judge Waters support this contention, contrary to the opinion of the judge

Judge Waters has denied me my constitutional rights under Amendment I, (appendix at page 3a), right to petition my government for redress of grievances, Amendment V, (appendix at page 31a), due process, Amendment VII, (appendix at page 31a), trial by jury. Nowhere in the Constitution does it grant a judge the authority or jurisdiction to deny me my constitutional rights. My rights as

retained by "The people" as set forth in Amendments IX and X have been violated by Judge Waters arbitrary dismissal of my complaint. (Appendix at page 32a).

Judge Waters, was required to take an oath of office by Article VI of the U.S. Constitution, (appendix at page 30a), and Title 28 U.S.C. § 453. (Appendix at page 41a). Judge Waters has violated his oath of office by his order and Letter Opinion dated July 21, 1987, (Appendix Exhibit A at page 1a).

The public servant employees of the IRS violated their own regulations in the assessment and collection of taxes which I did not owe. I was not provided with the 30 day letter as required by IRS Rule 301.6203-1 (Appendix at page 38a), nor did the IRS agents comply with Rules 601.101, 601.102, 601.103, 601.105 and 601.106, (Appendix at pages 38a - 40a). I was not afforded an opportunity to protest any of the unlawful assessments

in accordance with the administrative procedures which the IRS is required to follow as set forth in their rules and regulations as quoted above. The court's attention is particularly directed to Rule 1 of these regulations which is quoted in pertinent part as follows:

> § 601.106(f)(1) Rule I, (Appendix at page 40a).
> An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative is his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

The public servant employees of the IRS violated criminal statutes in their action of assessing and collecting money which I did not owe by lien and levy as set forth in Title 18 U.S.C. § 4, knowledge of a crime, (appendix at page

32a), § 241, conspiracy, (appendix at page 32a), § 242, deprivation of rights under color of law, (appendix at page 33a), § 872, extortion, (appendix at page 33a), § 1001, falsifying documents, (appendix at page 34a), § 1018, false certificates, (appendix at page 34a), § 1621, perjury, (appendix at page 35a), and § 1622, subornation of perjury, (appendix at page 35a).

The IRS agents also violated statutes under Title 26 U.S.C., more specifically § 7214, collecting more taxes than are due, (appendix at page 35a). This form of criminal act is specifically proven by the fact that I was eventually refunded the sum of $467.45 which was over collected by lien and levy over and above the false and fraudulent assessment made by the IRS (see order dated July 22, 1987, appendix Exhibit A at page 1a).

The IRS agents totally disregarded their own administrative procedures at

set forth in their rules and regulations in the assessment and collection of taxes by lien and levy which I did not owe. I was deprived of my money and my constitutional rights as a direct result of the IRS agents disregard of their required administrative procedures. I was thus denied my constitutional right under the First Amendment to petition my government for redress of grievance, (appendix at page 30a), and my rights under the Fifth Amendment of due process, (appendix at page 31a). The confiscation of my money by lien and levy which I did not owe violated my constitutional rights under the Fourth Amendment, "the right to be secure," (appendix at page 31a), my Fifth Amendment right of due process, (appendix at page 31a), and my Seventh Amendment right of trial by jury, (appendix at page 31a). The IRS agents made false accusations and levied fines which are criminal sanctions in violation

of my constitutional rights under Amendment VI which grants me the right to public trial by jury, (appendix at page 31a).

The imposing a fine by acting as accuser, prosecutor, judge and jury by the agents of the IRS usurped the power and jurisdiction of the judicial branch of government and also violated my VIII Amendment (appendix at page 32a) rights by imposing an excessive fine.

The allegations contained in my complaint and herein set forth above are sufficient to sustain my cause of action and must, in accordance with the law and judicial procedure, be accepted as true until proven otherwise, which means a trial in the usual course of judicial procedure.

As a belligerent claimant in person, I demand all of my rights, privileges and immunities secured by the organic written national Constitution of the Republic of

the United States and the Constitution of the State of Arkansas as being inalienable and inviolate.

> AN ORDER ARBITRARILY ISSUED BY THE COURT DISMISSING WITH PREJUDICE ALL OF THE INDIVIDUALS LISTED IN MY COMPLAINT AND ALL THE ISSUES CONNECTED THERETO IS A FINAL ORDER AND APPEALABLE AS OF RIGHT UNDER THE PROVISIONS OF TITLE 28 U.S.C. § 1291

The court erred in dismissing my appeal for lack of jurisdiction. This decision is in conflict with Supreme Court decisions and decisions of other appeals courts in defining a dismissal with prejudice.

In this regard, I will refer to the order and the accompanying letter signed by Judge Waters dated July 21, 1987 and filed in the district court on July 22, 1987 dismissing the part of my complaint as pertains to all the defendants listed therein with prejudice. (See Appendix exhibit A at page 1a).

The statutory authority of the court of Appeals to review Judge Waters order

and accompanying letter on appeal is contained in Title 28 USC § 1291.

An order such as Judge Waters which dismiss an action with prejudice is a final order since it terminates unequivocally all action against all the individuals listed in my complaint. If this order is not appealed immediately, I am forever barred from asserting my constitutional rights for redress of grievances against these individuals for their criminal conspiracy to deprive me of my property under color of law and for the unlawful collection by lien and levy of alleged taxes which they knew I did not owe. The only remaining issue to be resolved after Judge Waters order terminating my action against the public servant employees of the Internal Revenue Service for their criminal acts is my complaint against the United States Government for the recovery of money fraudulently assessed and taken from me

by lien and levy which I did not owe.

Courts have consistently held that an order dismissing with prejudice is a final order and follows the definition contained in Black's Law Dictionary for the term "with prejudice" which is quoted as follows:

> "With prejudice. The term as applied to judgment of dismissal is as conclusive of rights of parties as if action had been prosecuted to final adjudication adverse to the plaintiff. Fenton v. Thompson, 352 Mo. 199, 176 S.W.2d 456, 460."

From the above definition, it could not be made any clearer that Judge Waters' order of July 21, 1987 was a clear cut and decisive final order when he stated "dismissed from this action, with prejudice," and the order is therefore appealable under Title 28 U.S.C. § 1291

However, the court should not rely upon a mere dictionary definition, but should require more definite proof of the meaning of a "final decision." The term "final decision" has been defined in numerous

court cases which are listed below.

In the case of Segal v. Garrigues, 320 So.2d 475, the court stated:

> Appellant Segal sued appellee Garrigues in three counts. Count I is for slander; count II is for interference with contractual rights in the operation of appellant's business; count IV is for conspiracy to destroy appellant's business and good will; count III has been abandoned. Upon motion to dismiss, the trial court granted the motion as to count I "with prejudice" and as to counts II and IV "with leave to amend."
> * * * * * * * * * * * * *
> [2] Since the order granting the motion to dismiss count I with prejudice is a final order, it is appealable even though other counts of the complaint remain pending. (Emphasis added).
>
> * * * * *
>
> Accordingly, appellee's motion to dismiss this appeal is denied."

The above case is similar to my case and very clearly defines a final order as one dismissing with prejudice.

In my case there are two distinct causes of action. Count I is against the U.S. Government for taxes had and received which I did not owe and counts II through

XIX are causes of action against individuals for their criminal action in depriving me of my property by lien and levy and my constitutional rights under color of law. The court order of Judge Waters dated July 21, 1987 dismissing with prejudice was a final judgement against all my claims and all of the parties in the second part of my complaint and is not an interlocutory order.

In the case of Fenton v. Thompson, 176 SW 2d 456 (1944) at 460, the court further defines final judgement as follows:

> [6] "Respondent insists that in our procedure the words 'with prejudice' do not exist and that there is no decision of our courts defining the term. We think the term 'with prejudice' has a well-recognized legal import; 'it is the converse of the term 'without prejudice' and is as conclusive of the rights of the parties as if the suit had been prosecuted to a final adjudication adverse to plaintiff." 45 Words and Phrases, Permanent Edition p. 455. See Long v. Long, 141 Mo 352, 371, 44 S.W. 341.

Here again we find that the words "dismissed with prejudice" means a final

judgement.

Again in the case of Gonzalez v. Gonzalez, 127 NE 2d 673 at 675, the court defined a final judgement by stating as follows:

> [4] "The term `with prejudice' has a well-recognized legal import; it is the converse of the term `without prejudice' and is as conclusive of the rights of the parties as if the suit had been prosecuted to a final prosecution adverse to the complaintant In re Estate of Crane, 343 I11. App. 327, 99 N.E. 2d 204."

This definition of "with prejudice" is further defined in the case of Conerly v. Westinghouse Elec. Corp. 623 F.2d 117 (1980) where the court said:

> A dismissal with prejudice constitutes a final appealable judgment and confers jurisdiction upon this court under 28 U.S.C. § 1291. Experimental Engineering v. United Technologies, 614 F.2d 1244, (9th Cir. 1980).

The same definition as stated above is reiterated in Harris v. Moye's Estate, 202 S.W. 2d 306 at 362, and again in Schuster v. Northern Co. 256 P 2d 249 at 252.

For the Supreme Court's definition and

application of an appealable order as applied to Title 28 U.S.C. § 1291 see Gillespie, Administratrix v. United States Steel Corp. 379 U.S. 148 (1964) quoted as follows:

> In this Court respondent joins petitioner in urging us to hold that 28 U.S.C. § 1291 (1958 ed.) does not require us to dismiss this case and that we can and should decide the validity of the District Court's order to strike. We agree. Under § 1291 an appeal may be taken from any "final" order of a district court. But as this Court often has pointed out, a decision "final" within the meaning of § 1291 does not necessarily mean the last order possible to be made in a case. Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 545.
>
> * * * * * * * * * * * * *
>
> Because of this difficulty this Court has held that the requirement of finality is to be given a "practical rather than a technical construction." Cohen v. Beneficial Industrial Loan Corp., supra, 337 U.S., at 546. See also Brown Shoe Co. v. United States, 370 U.S. 274, 306; Bronson v. Railroad Co., 2 Black 524, 531; Forgay v. Conrad, 6 How. 201, 103. Dickinson v. Petroleum Conversion Corp., 338 U.S. 507, 511, pointed out that in deciding the question of finality the most important competing considerations are "the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other."
>
> * * * * * * * * * * * * *
>
> Furthermore, in United States v.

General Motors Corp., 323 U.S. 373, 377, this Court contrary to its usual practice reviewed a trial court's refusal to permit proof of certain items of damages in a case not yet fully tried, because the ruling was "fundamental to the further conduct of the case." For these same reasons this Court reviewed such a ruling in Land v. Dollar, 330 U.S. 731, 734, n.2, and Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 685, n. 3. where as here, the case had not yet been fully tried. And see Cohen v. Beneficial Industrial Loan Corp., supra, 337 U.S., at 545-547. We think that the questions presented here are equally "fundamental to the further conduct of the case." It is true that if the District Judge had certified the case to the Court of Appeals under 28 U.S.C. § 1292(b) (1958 ed.), the appeal unquestionably would have been proper; in light of the circumstances we believe that the Court of Appeals properly implemented the same policy Congress sought to promote in § 1292 (b) by treating this obviously marginal case as final and appealable under 28 U.S.C. § 1291 (1958 ed.).

Also see Cohen v. Beneficial Loan Corp. 337 U.S. 541, (1949) where the Supreme Court stated:

This decision appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated. The Court

has long given this provision of the statute this practical rather than a technical construction. Bank of Columbia v. Sweeny, 1 Pet. 567, 569, United States v. River Rouge Co., 269 U.S. 411, 414; Cobbledick v. United States, 309 U.S. 323, 328.

We hold this order appealable because it is a final disposition of a claimed right * * * * .

This same explanation of the meaning of "dismissal with prejudice" and application of Title 28 USC § 1291 is reiterated in the Supreme Court's decision in Eisen v. Carlisle & Jacquelin Et Al. 417 U.S. 156 (1974).

1. The District Court's resolution of the notice problems constituted a "final" decision within the meaning of 28 U.S.C. § 1291 and was therefore appealable as of right under that section. Pp. 169-172.

(a) Section 1291 does not limit appellate review to "those final judgments which terminate an action . . ," but rather the requirement of finality is to be given a "practical rather than a technical construction." Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-546. Pg. 170-172.)

The action of the court of appeals in rejecting my appeal for lack of

jurisdiction is such a departure from the usual course of Judicial proceedings and sanctions such a departure in the district court and is contrary to the decisions of other courts of appeal as well as the decisions of this court as set forth above that it is a mandate upon this court to exercise its power of supervision over the lower courts in order to preserve the semblance of justice in our Judicial system.

WHEN AN APPEAL IS PROPERLY DOCKETED IN THE COURT OF APPEALS, THE DISTRICT COURT LOOSES ALL AUTHORITY AND JURISDICTION OVER THE ISSUES ON APPEAL

My appeal was timely filed and docketed in accordance with Rules 58 and 79(a) Federal rules of Civil Procedure. The order of July 21, 1987 was set forth on a separate document (appendix Exhibit A at page 1a) and entered on the civil docket in accordance with Rule 79(a) FRCP and appears on said docket as item number 3 dated July 22, 1987. This order was a final order in

accordance with the argument and citations set forth above and appealable as a right in accordance with Title 28 U.S.C. § 1291.

When a final order of the district court is on appeal, the district court looses all authority and jurisdiction over the issues on appeal. This fact is set forth in the case of Leonard v. U.S., 633 F.2d 599, 609 and 610 (1980) where the court states:

> "Normally the filing of a timely and sufficient notice of appeal immediately transfers jurisdiction, as to any matters involved in the appeal, from the district court to the court of appeals. Once a proper appeal is taken, the district court may generally take action only in aid of the appeal or to correct clerical errors as allowed by the Federal Rules of Civil (or Criminal) Procedure. See 9 Moor's Federal Practice 203.11 (2d ed. 1980)."

Since an order dismissing "with prejudice" is a final order and appealable as a right and in accordance with the above quote, the district court lost all jurisdiction and authority over this case when the appeals court accepted the

appeal. Until such time as the appeals court rules on this case, the district court has no authority or jurisdiction over the case.

In the case of Firestone Tire and Rubber Co. v. Risjord, 449 US 368 (1980) at 376, the court stated:

> "To be appealable as a final collateral order, the challenged order must constitute `a complete, formal and, in the trial court, final rejection,' Abney v. United States, supra, at 659, of a claimed right `where denial of immediate review would render impossible any review whatsoever,' United States v. Ryan, Supra.

The order of Judge Waters dismissing the part of my complaint "with prejudice," if not appealed immediately, will cause me to lose all of my claimed right forever. There is no appeal from a final order after the trial is completed.

The purpose of Title 28 U.S.C., section 1291 is to prevent piecemeal litigation. The order of Judge Waters would be in direct conflict with this purpose. If the final order were appealable upon completion

of the litigation, then it would open up the entire case as a new cause of action because the part of my complaint dismissed by Judge Waters was a complete and separate cause of action.

Although the statement above pertaining to jurisdiction of the district court is the generally accepted rule of law, there appears to be considerable controversy and disagreement among the Appeals Courts of different districts. This conflict between the Judicial decisions of the various courts of appeals has apparently not been decided by the Supreme Court. Under the circumstances, it would be appropriate for me to suggest to this court to accept this petition for consideration for the exercise of the court's power of supervision and resolve this controversy.

ONCE A DISTRICT JUDGE RECUSES HIMSELF FROM A CASE, HE IS BARRED FROM REASSERTING HIS AUTHORITY OVER THAT CASE

I filed a motion and supporting brief

in the district court on September 1, 1987 in accordance with Title 28 U.S.C. §§ 144 and 455 to disqualify Judge Waters because of his bias and prejudice.

As a result of this motion, Judge Waters recused himself by his letter of September 24, 1987. (Appendix Exhibit E at page 9a). Later in his order of February 19, 1988, (Appendix Exhibit G at page 13a), Judge Waters denied my motion to disqualify the judge and proceeded to issue his order of February 19, 1988 and his letter opinion of the same date (Appendix Exhibit H at page 15a), which he made a part of his order.

In accordance with the case of Strenger v. U.S., 233 F.2d 947 (1956) at page 948. Once a judge has recused himself, he is forever prohibited from again assuming jurisdiction over the case.

In Berger v. U.S., 255 US 22 at 36 (1921), the court stated that Title 28 U.S.C. § 455 is a mandate for a judge to

withdraw where his bias and prejudice might reasonably be questioned.

Thus, Judge Waters had no jurisdiction or authority to continue to exercise control over this case. Title 28 U.S.C. § 455 is a mandate to a judge to recuse himself when there is any show of bias and prejudice. Certainly there is such evidence in this case. In support of this contention, I cite Pepsico Inc. v. McMillen, 764 F.2d 458 (1985), SCA Services Inc. v. Morgan, 557 F.2d 110 (1977, U.S. v. Brown, 534 F.2d 467 (1976), In Re Murchison, 349 US 133, Tuny v. Ohio, 273 US. 510, Offutt v. U.S., 348 US 11.

Thus it is evident from the cases cited above that Judge Waters, even though he recused himself, has defiled the mandate of Title 28 U.S.C. § 455 and decisions of the Supreme Court. He is clearly without jurisdiction or authority to issue his order of February 19, 1988 or his order of March 28, 1988, (Appendix Exhibit I at page

20a).

A JUDGE WHO DISMISSES A CAUSE OF ACTION WITHOUT HEARING OR RECEIVING ANY EVIDENCE IS IMPOSING A SEVERE PENALTY ON THE PLAINTIFF THAT IS CONTRARY TO THE USUAL COURSE OF JUDICIAL PROCEEDING.

Judge Waters in his order of July 21, 1987 sua sponte dismissed with prejudice the part of my complaint and my cause of action against all the named defendants. Judge Waters issued an order dated February 19, 1988 in which he ordered me to rewrite my complaint so as to eliminate all of the named defendants and all my claims against them. Thus I was ordered to forfeit my constitutional rights and void my right to appeal. When I objected to this order, Judge Waters issued his order of March 28, 1988 dismissing with prejudice the balance of my complaint. Judge Waters cited Title 28 U.S.C. Rule 41(b) FRCP as his authority for dismissing my case. This rule is not applicable in my case. This rule only applies where the case is heard before a

judge without a jury. The rule reads, in part, as follows:

> Rule 41. Assignment of Cases for Trial
> . . . . . .
> (b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgement against the plaintiff or may decline to render any judgement until the close of all the evidence.

I was given no warning that Judge Waters intended to issue his order of February 19, 1988 and therefore I was denied due process which requires notice and opportunity to be heard and protest such an order

I made a response dated February 24, 1988 in which I protested the action of Judge Waters.

It is undoubtedly true that a court with proper jurisdiction and authority could dismiss my complaint under Rule 41 (b) FRCP as a severe form of punishment where there was a flagrant and unjustified refusal of the plaintiff to obey the court orders upon motion of the defendants. In my case, Judge Waters was without authority or jurisdiction to issue any order much less to issue the order of February 19, 1988 in which he ordered me to rewrite my complaint so as to eliminate that portion of my complaint dismissed with prejudice in his order of July 21, 1987 and which was on appeal at that time.

The court should also note that the rule requires that a hearing be conducted before a judge without a jury and after all the evidence has been presented, the defendant may move for a dismissal.

In this case no hearing was held, no evidence was permitted to be presented; the judge was not authorized to conduct a

hearing in the absence of a jury even if such a hearing had been held. I was not given a chance to object to such a proceeding and was denied my right of due process.

In his letter and order of February 19, 1988, Judge Waters states as follows:

> ". . . . . and plaintiff is ordered and directed to make his motion more definite and certain in the manner specified in the court's letter."

What motion is the court referring to?

In the letter accompanying the order and incorporated therein Judge Waters states:

> ". . . . . The court will not accept a pleading which attempts to make claims other than that which the court left pending by its July 21, 1987, letter and order."

In the issuance of such an order, Judge Waters has usurped the jurisdiction and authority of the U.S. Court of Appeals.

As a result of Judge Waters' order of February 19, 1988, I am faced with a dilemma. Judge Waters, in his order, has

directed me to rewrite my complaint so as to eliminate from my complaint all of that portion of my complaint as pertains to all of the individual persons listed in my complaint. In Judge Waters' order of July 22, 1987, he dismissed with prejudice all of the individuals listed in my complaint. This order was appealed and is docketed as Appeal No. 87-2141WA.

In Judge Waters' order of July 22, 1987 he states:

> ". . . . . All other allegations of said pleading, and all defendants with the exception of the United States, are dismissed from this action, with prejudice."

Judge Waters had no jurisdiction or authority to issue his order of February 19, 1988 since these issues were on appeal. The judge had recused himself and had no authority to reassert jurisdiction.

Even by the most liberal stretch of the imagination, if Judge Waters had jurisdiction and authority to issue his order of March 28, 1988, he would

immediately come in conflict with the Constitution and my rights thereunder. The order citing a rule would also come in direct conflict with Title 28 U.S.C. § 2072, which states in part as follows:

§ 2072. Rules of civil procedure

. . . . . .

> "Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution."

The imposing of a sanction under FRCP Rule 41 (b) of a "Sua Sponte" order dismissing my cause without notice or hearing or giving me an opportunity to plead my case is a usurpation of authority and denies me my constitutional rights.

If I comply with Judge Waters' order of February 19, 1988 I will be forced to forfeit my constitutional rights under the First Amendment, (the right to petition the government for a redress of grievances), the Forth Amendment, (to recover damages for deprivation of rights), the Fifth

Amendment, (Due process), the Sixth Amendment, (the right to face my accusers), and the Seventh Amendment, (right to trial by jury).

The Supreme Court of the United States has best expressed my views when the court stated in Simmons v. U.S 390 US 377 (1968) at 394:

> "We find it intolerable that one constitutional right should have to be surrendered in order to assert another."

For me to comply with Judge Waters' order, I would have to forfeit several of my constitutional rights.

I contend that my complaint was in complete compliance with Rule 8 of FRCP. This rule states that a complaint may have several claims. Due to the long train of abuses that I have suffered at the hands of public servant employees of the Internal Revenue Service, I made numerous claims against several of the listed defendants. Each claim is set forth in my complaint as

simply, concisely and directly as I am capable of wording it. This particular issue was not the item of controversy in the order. The part of the order that created the problem was the part of the order that would require me to eliminate from my complaint the part that had been dismissed with prejudice by Judge Waters in his order of July 21, 1987 and was appealed as Appeal #87-2141WA.

Judge Waters has acted arbitrarily without jurisdiction or authority in issuing his orders in this case. Therefore his orders are void under the provisions of Title 28 U.S.C. FRCP Rule 60 (b)(4).

Arbitrary dismissal is a severe sanction and is frowned upon by most courts. This fact is born out in the case of Jefferson Fourteenth Assoc. v. Wometco De Puerto Rico 695 F.2d 524 (1983) where the court said:

> "The Federal Rules of Civil Procedure do not provide for sua sponte dismissal by the court of a case on the merits. Rule 41 provides that the court may

grant an involuntary dismissal upon a motion by the defendant, either because the plaintiff has failed to prosecute or comply with the rules, or if the plaintiff has failed to show a right to relief after having presented his case in a trial without a jury. Alternatively,a case may be adjudicated before trial under Rule 12(c) or Rule 56, upon a party's moving for judgment on the pleadings. The only provision in the rules for sua sponte dismissal is for lack of subject matter jurisdiction, under Rule 12(h)(3)."

Also see Emerick v. Fenick Industries, Inc. 539 F.2d 1379 (1976) where the court said:

"The due process clause of the fifth amendment limits the power of courts to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause. Societe Internationale v. Rogers, 357 U.S. 197, 78 S.Ct. 1087, 2 L.Ed.2d 1255 (1958). When the disobedient party is a plaintiff, dismissal with prejudice is a sanction of last resort, applicable only in extreme circumstances. Thomas v. United States, 531 F.2d 746,749 (5th Cir. 1976); Bon Air Hotel, Inc. v. Time, Inc. 376 F.2d 118 (5th Cir. 1967). When the disobedient party shows that his recalcitrance was based on factors beyond his control or on his exercise of constitutional privilege, a reviewing court is justified in terming the dismissal an abuse of discretion. See Thomas v. United States, supra; Dorsey v. Academy Moving & Storage, 423 F.2d 858, 861 (5th Cir 1970). When, as here, a defendant's pleadings are stricken, an appellate court's

> review should be particularly scrupulous lest the district court too lightly resort to this extreme sanction, amounting to judgment against the defendant without an opportunity to be heard on the merits."

It is obvious from the above presentation of facts and cases cited that Judge Waters had no jurisdiction or authority to issue his order of February 19, 1988 or his order of March 28, 1988.

THE REFUSAL OF THE CLERK OF DISTRICT COURT TO ISSUE SUMMONSES WAS IN DIRECT VIOLATION OF TITLE 28 U.S.C. RULE 4 FRCP

The rules and regulations of Title 28 U.S.C. as prescribed by the Judicial conference when submitted to Congress and approved by that body became the law of the land. No judge or court clerk has the authority or jurisdiction to set these rules or regulations aside. The refusal of the court clerk of the district court to issue summons was a direct violation of Title 28 U.S.C. Rule 4, which denied me my constitutional rights. See Appendix Exhibit D at page 8a.

CONCLUSION

For the forgoing reasons and in the interest of justice, it is urgently requested that this petition for Writ of Certiorari be granted.

APPENDIX

TABLE OF CONTENTS

Exhibit A	Order of United States District Court, Western District of Arkansas, Fayetteville Division, July 21, 1987	1a
Exhibit B	Letter Opinion, United States District Court, Western District of Arkansas, Fayetteville Division, July 21, 1987	3a
Exhibit C	Briefing Schedule Order, United States Court of Appeals for the Eighth Circuit, August 21, 1987	5a
Exhibit D	Letter of Court Clerk from the United States District Court, Western District of Arkansas, Fayetteville Division, September 23, 1987	8a
Exhibit E	Letter of Judge Waters, United States District Court, Western District of Arkansas, Fayetteville Division, September 24, 1987	9a
Exhibit F	Order of the United States District Court, Western District of Arkansas, Fayetteville Division February 8, 1988	11a

Exhibit G	Order of the United States District Court, Western District of Arkansas, Fayetteville Division, February 19, 1988	13a
Exhibit H	Letter Opinion, United States District Court, Western District of Arkansas, Fayetteville Division February 19, 1988	15a
Exhibit I	Order of United States District Court, Western District of Arkansas, Fayetteville Division March 28, 1988	20a
Exhibit J	Letter to Clerk, United States District Court, Western District of Arkansas, Fayetteville Division June 3, 1988	23a
Exhibit K	Order of the United States Court of Appeals, for the Eighth Circuit, September 22, 1988	25a
Exhibit L	Order of the United States Court of Appeals, for the Eighth Circuit, November 2, 1988	28a

UNITED STATES CONSTITUTION

Article III	30a
Article VI	30a
Amendment I	30a

Amendment IV 31a

Amendment V 31a

Amendment VI 31a

Amendment VII 31a

Amendment VIII 32a

Amendment IX 32a

Amendment X 32a

STATUTES

18 U.S.C. Section 4 32a

18 U.S.C. Section 241 32a

18 U.S.C. Section 242 33a

18 U.S.C. Section 872 33a

18 U.S.C. Section 1001 34a

18 U.S.C. Section 1018 34a

18 U.S.C. Section 1621 35a

18 U.S.C. Section 1622 35a

26 U.S.C. Section 7214 35a

26 U.S.C. Section 7422 36a

26 U.S.C. Section 7804 37a

IRS Rule 301.6203-1 38a

IRS Rule 601.101 38a

IRS Rule 601.102 38a

IRS Rule 601.103 38a

IRS Rule 601.105 39a

IRS Rule 601.106 40a

28 U.S.C. Section 144 40a

28 U.S.C. Section 453 41a

28 U.S.C. Section 455 41a

28 U.S.C. Section 1254(1) 41a

28 U.S.C. Section 1291 41a

28 U.S.C. Section 1331 41a

28 U.S.C. Section 1340 42a

28 U.S.C. Section 1343 42a

28 U.S.C. Section 1346 42a

28 U.S.C. Section 1652 42a

28 U.S.C. Section 1653 43a

28 U.S.C. Section 1654 43a

28 U.S.C. Section 2072 43a

42 U.S.C. Section 1985 43a

42 U.S.C. Section 1986 44a

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

V. CIVIL NO. 87-5089

UNITED STATES GOVERNMENT, DEFENDANTS
ET AL.

O R D E R

On this 21st day of July, 1987, the court, after considering the "Complaint for Recovery of Money Illegally Assessed and Collected, Section 7422 IRC Deprivation of Constitutional Rights Libel," finds, sua sponte, that such pleading is frivolous on its face except to the extent that it attempts to allege a cause of action under 26 U.S.C § 7422 for refund of taxes wrongfully assessed and paid under protest. All other allegations of said pleading, and all defendants with the exception of the United States, are dismissed from this action, with

Exhibit A

prejudice. This matter shall remain pending, subject to further orders of the court, and will be considered to be a complaint to collect taxes allegedly paid by the plaintiff, under protest, in the amount of $10,316.54, $467.45 of which has been refunded to the plaintiff.

IT IS SO ORDERED.

H. Franklin Waters (seal)

United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D

Jul 22 1987

Beverly R. Stites, Clerk
By Rhonda Clark
Deputy Clerk

Exhibit A

UNITED STATES DISTRICT COURT
Western District of Arkansas
Post Office Box 1908
Fayetteville, Arkansas 72702-1908

H. Franklin Waters
Chief Judge

July 21, 1987

Mr. Water J. Moeller
Route 2
West Fork, Arkansas 72744

Mr. J. Michael Fitzhugh
United States Attorney
P.O. Box 1524
Fort Smith, Arkansas 72902

Re: Walter J. Moeller v. United States Government, et al.
Civil No. 87-5089

Gentlemen:

The court has received and reviewed the "Complaint for Recovery of Money Illegally Assessed and Collected, Section 7422 IRC Deprivation of Constitution Rights Libel" filed by Mr. Moeller. The court is convinced that the complaint is, by and large, frivolous on its face. The cases and statutes which hold that employees of the Internal Revenue Service may not be individually sued are almost too numerous to list. For example, 26 U.S.C. § 7422, the very statute cited by Mr. Moeller for jurisdiction, states: "A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative."

Exhibit B

While it is difficult to determine from the 36 pages which comprise the complaint that Mr. Moeller has really asked for a refund of taxes wrongfully paid, the court will liberally construe the "pleading" in favor of Mr. Moeller and will consider this to be an action brought under 26 U.S.C. § 7422 for refund of taxes wrongfully assessed and paid under protest. The court, sua sponte, determines that all other allegations of the complaint are frivolous on their face and should be dismissed. All defendants, other that the United States, will be dismissed from the lawsuit with prejudice.

Yours very truly,

H. Franklin Waters (seal)

cc: U.S. Clerk

Exhibit B

United States Court of Appeals
For the Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

Robert D. St. Vrain
Clerk

304-425-5600
FTS: 279-5600

August 21, 1987

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Re: 87-2141WA Walter J. Moeller, APPELLANT vs. Roscoe L. Eggers, etc., et al, APPELLEES (see attached for complete title)

Dear Mr. Moeller:

We have received certified copies of notice of appeal and docket entries from the Clerk of the United States District Court, together with notification of payment of the $100 docket fee. In accordance, with the Federal Rules of Appellant Procedure and our local Rules, this appeal has today been assigned the docket number indicated.

Enclosed is a copy of a briefing schedule order entered today regarding record on appeal.

Sincerely,

Linda L. Penberthy lkl (seal)
Linda L. Penberthy
Senior Deputy Clerk

Exhibit C

1k1

Enclosure

cc: Hon. J. Michael Fitzhugh, United States Attorney, P.O. Box 1524, Fort Smith, AR 72902
Ms. Beverly R. Stites, Clerk, U.S. District Court, P.O. Box 1447, Fayetteville, AR 72702 (87-5089)

Exhibit C

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

APPEAL BRIEFING SCHEDULE ORDER

Appeal No. 87-2141WA Walter J. Moeller v. Roscoe L. Eggers, et al

Date: August 21, 1987

The Court will consider this appeal on the original file of the United States District Court in lieu of the designated record required by Circuit Rule 7. The Clerk of the District Court is requested to forward the original file to this Court forthwith.

APPELLANT BRIEF: September 30, 1987

APPELLEE BRIEF: October 30, 1987

Linda L. Penberthy
Senior Deputy Clerk

Exhibit C

UNITED STATES DISTRICT COURT
Office of the Clerk
Western District of Arkansas
Post Office Box 1523
Fort Smith, Arkansas 72902
(501) 783-6833 . FTS 740-3419

P.O. Box 1566
El Dorado, AR 71730

P.O. Box 1447
Fayetteville, AR 72702

P.O. Box 2746
Texarkana, AR 75501

Drawer 1
Hot Springs, AR 71901

September 23, 1987

Re: Civil Case No. 87-5089
Walter J. Moeller v. USA, et al

Mr. Walter J. Moeller did tender 19 summonses to the Clerk's Office, Fayetteville Division, demanding them to be issued this date, under Title 28 Rule 4 of Federal Rules of Civil Procedure. These summonses could not be issued by this office due to the defendants having been dismissed, by Court Order dated July 22, 1987.

BEVERLY R. STITES, CLERK

By: Joanne Casebere, D.C. (seal)

Exhibit D

UNITED STATES DISTRICT COURT
Western District of Arkansas
Post Office Box 1908
Fayetteville, Arkansas 72702-1908

H. Franklin Waters
Chief Judge

September 24, 1987

Mr. Water J. Moeller
Route 2
West Fork, AR 72774

Mr. Michael N. Wilcove
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044

Mr. J. Michael Fitzhugh
United States Attorney
P.O. Box 1524
Fort Smith, AR 72902

Re: Walter J. Moeller v. United States Government, et al. Civil No. 87-5089

Gentlemen:

Mr. Moeller has filed a motion asking that I disqualify in this case, and the government has responded.

I understand that at least some portion and perhaps all of this case is on appeal to the Court of Appeals, and I am not certain that I have jurisdiction to take any action in the matter unless and until it is remanded. For this reason, I will take no action on the motion until then.

Exhibit E

Yours very truly,

H. Franklin Waters (seal)
H. Franklin Waters

cc: U.S. Clerk

Exhibit E

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF ARKANSAS

FAYETTEVILLE DIVISION

WALTER J. MOELLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL NO.87-5089
	)	
UNITED STATES GOVERNMENT ET AL.,	)	
	)	
	)	
Defendants	)	

ORDER

Defendant's Motion for Leave to File Reply is granted. Defendant's Reply to Plaintiff's Opposition to and Response to Defendant's Motion to Dismiss shall be deemed to be filed the date that this Order is entered on the docket.

SO ORDERED this 8th day of February, 1988.

H. Franklin Waters (seal)

UNITED STATES DISTRICT JUDGE

Exhibit F

U.S. District Court
Western Dist. Arkansas

F I L E D

Feb 8 1988

Chris R. Johnson, Clerk
By Rhonda Clark (seal)
Deputy Clerk

Exhibit F

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

vs. Civil No. 87-5089

UNITED STATES GOVERNMENT,
ET AL. DEFENDANTS

O R D E R

On this 19th day of February, 1988, upon consideration of the entire file herein the court finds for the reasons set forth in its letter to plaintiff and the attorney for the defendant, a copy of which is attached hereto and made a part hereof, that plaintiff's motion to disqualify the undersigned be and it hereby is denied. The court further finds that defendant's motion to dismiss should be and it hereby is considered to be a motion to make more definite and certain, and plaintiff is ordered and directed to make his motion more definite and certain in the manner

Exhibit G

specified in the court's letter.

IT IS SO ORDERED.

H. Franklin Waters (seal)

United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D

Feb 19 1988
Chris R. Johnson, Clerk
By JC (seal)
Deputy Clerk

Exhibit C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
POST OFFICE BOX 1908
FAYETTEVILLE, ARKANSAS 72702-1908

H. Franklin Waters
Chief Judge

February 19, 1988

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Mr. Michael N. Wilcove
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044

Mr. J. Michael Fitzhugh
United States Attorney
P.O. Box 1524
Fort Smith, AR 72902

Re: Walter J. Moeller, v. United States Government, et al.
Civil No. 87-5089

Gentlemen:

As you know, this case has been pending for several months and, because Mr. Moeller has appealed the court's order disposing of a portion of the case, this court has taken no action for several months. It was, however, again called to the court's attention because of the blizzard of papers brought on by the government filing its slightly more than one page motion for relief to file a reply to plaintiff's response to the government's motion to

Exhibit H

dismiss. When the court granted that motion and a two page reply was filed by the defendant, that brought on twenty-nine pages of additional filings by Mr. Moeller.

That has caused the court to again look at the matter, and has determined that it has jurisdiction to proceed in spite of the notice of appeal filed by plaintiff. This is because, in the court's view, the filing of the notice of appeal is clearly an attempt to appeal a non-appealable order. Of course, 28 U.S.C. § 1291 allows the appeals only from "final decisions" of the district courts. The courts dismissal of only a portion of the lawsuit, leaving other matters to be tried is not a final order within the meaning of that statute.

The United States Supreme Court said long ago in Catlin v. United States, 324 U.S. 229, 233 (1945) that:

> A `final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.

As the Supreme Court pointed out in that case, the purpose of 28 U.S.C. § 1291 is clearly to prevent piecemeal appeals.

The court has concluded that plaintiff's attempted appeal in this case is clearly an attempt to appeal an order that is not final. What the court did in the earlier order to dismiss only a portion of the lawsuit against some of the defendants. There are still issues to be disposed of. Thus, the court's earlier order was not a "final decision" because the court has more to do than execute the judgment rendered. It must, if it reaches that point, try the issue of whether plaintiff is entitled to tax refunds for

the years in question.

Since that is true, this court has jurisdiction to proceed in this matter and to rule on the motion for summary judgment. The Court of Appeals for the Second Circuit, in Leonhard v. United States, 633 F.2d 599 (2d Cir. 1980), in a well-reasoned opinion, held that the filing of the notice of appeal of a non-appealable order does not deprive the trial court of jurisdiction, and said, "[W]e see no efficiency to be gained by allowing a party arbitrarily to halt the district court proceedings by filing a plainly unauthorized notice which confers on this court the power to do nothing but dismiss the appeal." Id at 610.

On September 1, 1987, plaintiff filed a motion to disqualify this court and a brief in support and subsequently filed a response to the government's opposition to the motion. The motion and response of plaintiff consists of some 87 pages.

It is clear from the materials included with Mr. Moeller's motion that it has no merit. It is obvious that Mr. Moeller objects to the court's handling of this case and a prior one and, as he points out, he does not know me and I do not know him. His remedy, if he disagrees with the court's rulings, is to appeal and he appears to have discovered how to do that.

As is pointed out in 13A Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 3452 it is not enough to cause a judge to disqualify to show that he has acquired from what has gone on during a case a personal conviction as to the merits of it. Nor, is the judge disqualified because he has presided over some other case involving the same party or closely

related facts. Instead, it must be shown that:

> The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other that what the judge learned from his participation in the case.

United States v. Grinnell Corp., 384 U.S. 563, 583 (1966). See also the several cases cited at footnote 13 of the Wright & Miller article at 559.

As indicated, the court has concluded that it is time to get this matter ready for trial if it is going to be tried, or if it is not, to dispose of it. The court agrees with the defendant that it can hardly be expected that either the defendant or the court know what Mr. Moeller claims his cause of action is from the 36 page, 104 paragraph complaint filed by him. As the court ruled in its letter of July 21, 1987, and accompanying order, all portions of the lawsuit have been dismissed with the exception of his claim, if he has made such a claim, that he is entitled to recover taxes in the amount of $10,316.54, $467.45 of which has been refunded to the plaintiff. The court will consider the defendant's motion to dismiss as a motion to make more definite and certain. Plaintiff will have ten days from the date of this order to amend his complaint to allege this cause of action, if he believes he has one. Such amended complaint will comply with Rule 8 of the Federal Rules of Civil Procedure and will, thus, be "a short and plain statement of the claim showing that the pleader is entitled to relief." The pleading must be in concise and plain terms showing what the plaintiff contends the government did to him in relation to those taxes. The court

will not accept a pleading which attempts to make claims other that that which the court left pending by its July 21, 1987, letter and order.

Yours very truly,

H. Franklin Waters (seal)
H. Franklin Waters

cc: U.S. Clerk

Exhibit H

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER, Pro Se PLAINTIFF

vs. Civil No. 87-5089

UNITED STATES GOVERNMENT, ET AL DEFENDANTS

O R D E R

On this 28th day of March, 1988, upon consideration of the entire file herein, the court finds:

1) That by letter dated February 19, 1988, the plaintiff was advised that the court had considered defendant's motion to dismiss as a motion for more definite statement and plaintiff was ordered and directed to, within ten days, reduce his 36 page 104 paragraph complaint previously filed by him to "a short and plain statement" of his claim as required by Rule 8 of the Federal Rules of Civil Procedure.

2) That defendant's response to the court's order was to file, on February 24,

Exhibit I

1988, a 13 page response contending that the court was biased and prejudiced and generally "wrong" and a multiple page petition for writ of mandamus.

That the court was concluded that the "claim" of plaintiff should be and it hereby is dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure in that plaintiff has failed to comply with the Federal Rules of Civil Procedure and a specific order of the court.

IT IS, THEREFORE, CONSIDERED ORDERED AND ADJUDGED that plaintiff's complaint filed herein should be and it hereby is dismissed with prejudice and that this matter should be and it hereby is terminated. The clerk of the court is directed to refrain from accepting further filings in this matter other than those filings necessary for plaintiff to perfect an appeal if that is his desire.

Exhibit I

IT IS SO ORDERED.

H. Franklin Waters (seal)

United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D

Mar 28 1988

Chris R. Johnson, Clerk
By N.W.
Deputy Clerk

This document entered on docket
in compliance with Rule 58 and
79(a), FRCP
on 3-29-88 by N.W.

Exhibit I

June 3, 1988

Chris R. Johnson, Clerk
U.S. District Court
P.O. Box 1447
Fayetteville, AR 72701

Dear Mr. Johnson:

In accordance with Rule 7 U.S. Court of Appeals Eighth Circuit, and Rule 10 and Rule 30 FRAP, this is to notify you that I, Walter J. Moeller, Appellant Pro se in Civil #87-5089 as appealed in Civil Appeal Civil No. 88-1782WA, intend to proceed on the entire court record which was filed in the Appeals Court as Appendix to Civil Appeal #87-2141WA and the documentary evidence contained therein which is required to prove the issues presented in my brief.

No hearing was held, no evidence was presented and no testimony was taken; therefore there is no transcript of proceedings in the court record.

Yours truly,

Walter J. Moeller, pro se (seal)
Route 2
West Fork, AR 72774
(501) 839-2484

U.S. District Court
Western Dist. Arkansas

F I L E D
Jun 3 1988
Chris R. Johnson, Clerk
By
Deputy Clerk

Exhibit J

CERTIFICATE OF SERVICE

I, Walter J. Moeller, pro se Plaintiff in Appeal #88-1782WA, certify that I have forwarded a copy of letter to Chris R. Johnson, Clerk, U.S. District Court, to Michael C. Durney, Edwin Meese III, and J. Michael Fitzhugh by placing a copy in a properly addressed envelope addressed to each of the persons named above and deposited the envelopes in the United States post office, postage prepaid on this 3rd day of June 1988.

Walter J. Moeller, Pro Se
Route 2
West Fork, AR 72774
(501) 839-2484

Exhibit J

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 87-2141

Walter J. Moeller, Appellant, v.	* Appeal from the * United States * District Court * for the Western * District of * Arkansas
Roscoe L. Eggers, Individually and in his capacity as a public servant employee of the IRS; James Westbrook, Individually and in his capacity as a public servant employee of the IRS; Paul D. Williams, Individually and in his capacity as a public servant employee of the IRS; William F. Barlow, Individually and in his capacity as a public servant employee of the IRS; H. Carradine, Individually and in his capacity as a public servant employee of the IRS; Randall Haynes, Individually and in his capacity as a public servant employee of the IRS; S. R. McKeever, Individually and in his capacity as a public servant employee of the	*

Exhibit K

IRS; Richard C. Voskuill, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; V. Regan, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; M. Sorrells, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Gus McClanahan, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Tony Treat, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Milton A. Barnett, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; David Cole, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; David N. Bradshaw, *
Individually and in his *
capacity as a public *
servant employee of the *
IRS; Margaret Roberts, *
Individually and in her *
capacity as a public *
servant employee of the *
IRS; Linda Sisson, *
Individually and in her *
capacity as a public *
servant employee of the *
IRS; C. B. Harmon, *
Individually and in his *
capacity as a public *
servant employee of the *

Exhibit K

IRS; Raymond P. Keenan, Individually and in his capacity as a public servant employee of the IRS; and Unknown Public Servant Employees of the Internal Revenue Service et al, whose names are indicated by the records of the Internal Revenue Service, Individually and in their capacity as employees of the Internal Revenue Service. *

Appellees.

Filed: September 22, 1988

Before HEANEY, BOWMAN and MCGILL, Circuit Judges.

O R D E R

The appeal of Walter J. Moeller is dismissed for lack of jurisdiction.

A true copy.

Attest: Robert D. St. Vrain (seal)

Clerk, U.S. Court of Appeals
Eighth Circuit

U.S. District Court
Western Dist. Arkansas
F I L E D
Nov 28 1988
Chris R. Johnson, Clerk
By
Deputy Clerk

Exhibit K

United States Court of Appeals
For the Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

Robert D. St. Vrain
Clerk

314-425-5600
FTS:279-5600

November 2, 1988

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Re: 87-2141WA Walter J. Moeller vs.
Roscoe L. Eggers,etc., et al.

Dear Mr. Moeller:

Enclosed is a copy of an order entered today at the direction of the court.

Sincerely,

Linda Penberthy (seal)
Linda Penberthy
Senior Deputy Clerk

/ea

Enclosures (1)

cc: Hon. J. Michael Fitzhugh
Michael L. Paup
Hon. H. Franklin Waters
Christopher R. Johnson, Clerk
(District Court No. 87-5089)

Exhibit L

United States Court of Appeals

For the Eighth Circuit

No. 87-2141

Walter J. Moeller,	*	
	*	
Appellant,	*	
	*	
vs.	*	Appeal from the
	*	United States
Roscoe L. Eggers, etc,	*	District Court
et al	*	for the Western
Appellees	*	District of
	*	Arkansas

Appellant's petition for rehearing en banc has been considered by the court and is denied.

Petition for rehearing by the panel is also denied.

November 2, 1988

Order Entered at the Direction of the Court:

Robert D. St. Vrain (seal)
Clerk, U.S. Court of Appeals, Eighth Circuit.

Exhibit L

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

Article III is quoted in pertinent parts:

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to Controversies to which the United States shall be a party;. . . .

Article VI is quoted in pertinent parts:

. . . .

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Text shall ever be required as a Qualification to any Office or public Trust under the Unites States.

Amendment I is quoted in pertinent part:

Congress shall make no law respecting an establishment of religion, or prohibiting

the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV is quoted in pertinent part:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V is quoted in pertinent part:

. . . . nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; not shall private property be taken for public use, without just compensation.

Amendment VI is quoted in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII is quoted in pertinent part:

In suits at common law, where the value in controversy shall exceed twenty dollars,

the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII is quoted in pertinent part:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX is quoted in pertinent part:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X is quoted in pertinent part:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

TITLE 18 U.S.C.

Title 18 U.S.C. § 4 is quoted in pertinent part:

Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the Unites States, shall be fined not more than $500 or imprisoned not more than three years, or both.

Title 18 U.S.C. § 241 is quoted in pertinent part:

Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of nay right or privilege secured by him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured - They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Title 18 U.S.C. § 242 is quoted in pertinent part:
Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or life.

Title 18 U.S.C. § 872 is quoted in pertinent parts:

Extortion by officers or employees of the United States

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined not more than $5,000 or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $100, he shall be fined not more than $500 or imprisoned not more than one year, or both.

Title 18 U.S.C. § 1001 is quoted in pertinent parts:

Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or devise a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Title 18 U.S.C. § 1018 is quoted in pertinent parts:

Official certificates or writings

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided

by law, shall be fined not more than $500 or imprisoned not more than one year, or both.

Title 18 U.S.C. § 1621 is quoted in pertinent parts:

Perjury generally

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

Title 18 U.S.C. § 1622 is quoted in pertinent parts:

Subornation of perjury

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both.

TITLE 26 U.S.C.

Title 26 U.S.C. § 7214 provides in pertinent parts:

Offenses by officers and employees of the

United States:

a. Unlawful acts of revenue officers or agents. - Any officer or employee of the United States acting in connection with any revenue law of the United States -

1. who is guilty of any extortion or willful oppression under color of law; or
2. who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or
3. who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or
7. who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate return, or statement; or
8. who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary; or

shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

Title 26 U.S.C. § 7422 provides in

pertinent part:

Civil actions for refund.

a. No suit prior to filing claim for refund. - No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

b. Protest or duress. - Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

Title 26 U.S.C. § 7804(b) provides in pertinent parts:

b. Preservation of Existing rights and remedies. - Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the

Secretary, shall be deemed to refer to the officer whose act or acts referred to in the proceeding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

IRS PROCEDURE AND ADMINISTRATION
RULES AND REGULATIONS
§ 301

§301.6203-1 Method of assessment. . . If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

IRS ADMINISTRATIVE PROCEDURE
SUBCHAPTER H - INTERNAL REVENUE PRACTICE
PART 601 - STATEMENT OF PROCEDURAL RULES

§ 601.101 Introduction
(b) Scope. This part sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service, and supersedes the previously published statements 26 CFR (1949 ed., Part 300-End) Parts 600 and 601) with respect to such procedural rules.

§ 601.102(a)(3)
Taxes of both classes may be contested by first making payment, filing claim for refund, and then bringing suit to recover if the claim is disallowed or no decision is rendered thereon within six months.

§ 601.103(c) Disputed liability - (1)
The taxpayer is given an opportunity to request that the case be considered by an Appeals Office provided that office has jurisdiction (§ 601.106(a)(3). If the taxpayer requests such consideration, the

case will be referred to the Appeals Office, which will afford the taxpayer the opportunity for a conference. The determination of tax liability by the Appeals Office is final insofar as the taxpayer's appeal rights within the Service are concerned.

§ 601.105(b)(4) - Conclusion of examination
At the conclusion of an office or field examination, the taxpayer is given an opportunity to agree with the findings of the examiner. If the taxpayer does not agree, the examiner will inform the taxpayer of the appeal rights.

§ 601.105(b)(5)(viii)(c)(2)(i) Field examination.
If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed, the examiner will prepare a complete examination report fully explaining all proposed adjustments. . . . Following such review, the taxpayer will be sent a copy of the examination report under cover of a transmittal (30-day) letter, providing a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requesting the taxpayer to inform the district director, within the specified period, of the choice of action.

§ 601.105 (b)(5)(viii)(d)(1)(iv)
. . . .In an unagreed case, the district director sends to the taxpayer a preliminary or "30-day letter" . . . .The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examiner's report explaining the basis of the proposed determination. . . . The preliminary letter also informs the taxpayer of appeal rights available if he or she disagrees with the proposed determination.

§ 601.106(b) Appeals function
Initiation of proceedings before Appeals.
In any case in which the district director has issued a preliminary or "30-day letter" and the taxpayer requests Appeals consideration and files a written protest when required (see paragraph (c)(1) of §§ 601.103, (c)(1) and (c)(2) of 601.105 and 601.507) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the Appeals organization.

§ 601.106(f)(1) Rule I
An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative is his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

TITLE 28 U.S.C.

§ 144 Bias or prejudice of judge.
Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceedings.

§ 453 Oaths of justices and judges
Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal rights to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God."

§ 455 Disqualification of justice, judge or magistrate.
(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonable be questioned.

§ 1254(1) Courts of appeals; certiorari; certified questions
Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or degree.

§ 1291 Final decisions of district courts.
The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

§ 1331 Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

§ 1340 Internal revenue; customs duties
The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports on tonnage except matters within the jurisdiction of the Court of International Trade.

§ 1343 Civil rights and elective franchise
(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person.
(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent.

§ 1346 United States as defendant
(a) the district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:
(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

§ 1652 State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the Unites States, in cases where they apply.

§ 1653 Amendment of pleadings to show jurisdiction.
Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

§ 1654 Appearance personally or be counsel
In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

§ 2072 Rules of civil procedure
. . . .
Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution.

TITLE 42 U.S.C.

§ 1985 Conspiracy to interfere with civil rights
. . . .
(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law, ...in any case of conspiracy set forth in this

section, if one or more persons engage therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators

§ 1986 Action for neglect to prevent conspiracy

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages causes by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.